IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.527 of 1999

Reserved on 30.11.2006

Date of decision 22-12-2006

State of H.P. Appellant

Versus

Puran Chand Respondent

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the appellant : Mr.Vijay Thakur, Dy. Advocate General.

For the respondent: Mr.K.D.Batish, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the appellant-State of Himachal Pradesh against the judgment of the court of learned Chief Judicial Magistrate, Kangra at Dharamshala dated 30.9.1999 vide which the accused was acquitted of the charge framed against him under Sections 325 and 506 IPC.

Briefly stated the facts of the case are that on 13.7.1996 at about 10.30 p.m., a report was lodged with the police by one Shakti Chand that he runs a vegetable shop at Shahpur. At about 4.45 p.m. on the same day he had gone to Gagal to sell mangoes but since he was getting less rate he came back. He got down from the jeep at 8.45 p.m. and Puran Chand met him and asked him from where he has come. He told him that he had gone to sell mangoes but since he was getting less rate, he came back. He and Puran Chand started walking towards their houses and when they reached near khud, Puran Chand caught hold of him and told him that he tries to be clever and will see him today and will kill him.

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

Puran Chand caught hold of his arm and gave a bite on his hand. He raised an alarm his sons Waryam Singh and Sukhvinder Singh reached there and accused took his little finger in his mouth and cut it with a tooth bite. He became unconscious and when he regained consciousness, he saw both of his sons present there. He further alleged that his both sons and Chowkidar Madho Ram had seen Puran Chand running from the spot and accused threw the portion of his little finger somewhere and a report was lodged with the police. The respondent was tried under the above sections resulting in his acquittal, hence this appeal.

I have heard Mr.Vijay Thakur, learned Deputy Advocate General for the appellant and Mr.K.D.Batish, learned counsel for the respondent and have gone through the record.

The submissions made by the learned Deputy Advocate General were that the complainant could not be examined since he died during the trial of the case and two of the alleged independent witnesses turned hostile. But both the sons of the complainant have materially corroborated the version given by the complainant in his report lodged with the police, but the learned trial court by a surprise conclusion did not refer to their testimonies or the infirmities, if any, by simply observing since they are interested witnesses being the relatives of the complainant and therefore their statements were not relied upon and the respondent was acquitted though there was sufficient evidence on record oral as well as medical to prove the guilt of the respondent and therefore those findings can be said to be perverse and are liable to be reversed.

On the other hand, the learned counsel for the respondent had supported the impugned judgment for the reasons recorded therein supplementing it by the submission that independent witness Madho Ram was not declared hostile which leads to an inference that his statement was not challenged in the court by the prosecution and the same was against prosecution. It was also submitted that the identity of the accused

was not established and therefore the findings of learned trial court acquitting the respondent are liable to be affirmed.

Coming to the evidence led by the prosecution PW-1 Sukhvinder Singh and son of the complainant/injured has stated that he was in his house at about 9/9.15 p.m., he heard the noise of his father “mar diya mar diya” and he reached near the khud and found that a quarrel was going on in between his father and Puran Chand accused. He stated that Puran Chand took the little finger of his father in his mouth and broke the finger and ran away from the spot. He further stated that the blood oozed out from the little finger and after some time, Surinder Singh and Madho Ram also came there and they went to Pradhan. In cross-examination he denied the suggestion that their house was at a distance of 1 ½-2 kilometers. He denied his knowledge in case his father had come in a jeep and had suffered injuries on his finger through the door of the jeep.

PW-6 Waryam Singh the other son of the injured stated that his father came out at about 9 p.m. and they heard the cries of their father at about 9 p.m. from khud. He along with his brother Sukhvinder Singh went there and found that Puran Chand had caught hold of his father and was giving beatings to him. He further stated that Puran Chand took the finger of his father in his mouth and also gave a bite at the arm of his father and ray away and portion of the finger of his father was separated. He further stated that Chowkidar Madho Ram and Surinder also reached there and saw the cut finger of their father. They went to Pradhan and then lodged the report. He denied the suggestion that their house was at a distance of 1-½/2 kilometers from the place of occurrence. He admitted that his father had come in a jeep to Village but denied that his father suffered injuries since his finger came in the door of the jeep.

Apart from this, the prosecution had also examined PW-2 Surinder Kumar about whose presence on the spot immediately after the occurrence PW-6 Waryam Singh had stated. The said Surinder Kumar was examined as PW-2 and stated that he came out to urinate and saw

Shakti Chand going towards his house along with his two sons. But he is not aware of any quarrel. He was declared as hostile and was subjected to cross-examination by learned A.P.P. He denied the suggestion that Shakti Chand was in an injured condition and blood was oozing out of his little finger. He admitted that he was on visiting terms with Puran Chand accused and knew him since his childhood and therefore the possibility that for this reason he might have turned hostile cannot be ruled out. He however admitted that he was also on visiting terms with Shakti Chand.

PW-3 Madho Ram about whose presence at the spot afterwards the witnesses have said and the complainant had also alleged in his report had appeared as PW-3. He stated that he did not see any quarrel in between accused and Shakti Chand. He had been subjected to detailed cross-examination as it appears from his statement and this permission for cross-examination must have been granted by the court. But there is no reference that any such permission was sought or was granted but the suggestions were allowed to be put up by learned A.P.P. for the state and for this reason the prosecution case cannot be thrown out that the witness was not declared as hostile and/or allowed to be cross-examined under mistake, if any, which appears to have been committed by the court since the witness was allowed to be cross-examined. He admitted in cross-examination that on the next date the complainant had lodged the report in the Panchayat as to how his finger was cut, but he cannot say if it came in the door of the jeep.

From above discussion of the evidence, it is clear that the complainant had clearly alleged in report lodged with the police that his sons Waryam Singh and Sukhvinder Singh had reached the spot on hearing his cries. Thus their names were not introduced subsequently but these were alleged in the report lodged immediately on the same day within about 1 and ½ hours and the Police Station was at a distance of 5 KMs as per FIR Ex.PW9/A and therefore the report was lodged immediately wherein the names of two eye witnesses who were the sons

of the complainant were clearly mentioned therein. There was also a reference that Chowkidar Madho Ram had reached the spot who was also examined as PW-3 referred to above, though in the statement of witness PW-6 Waryam Singh it had come that PW-2 Surinder Kumar had also reached there who was examined but had not supported the prosecution story. The statement of both these eyewitnesses i.e. sons of injured were not relied upon by learned trial court. The learned trial Court had observed in para 10 of the judgment, which reads thus :

" Since the independent witnesses Surinder Kumar and Madho Ram did not utter a word against the accused, I do not deem it safe to base conviction on the evidence of the complainant's sons Sukhvinder Singh and Waryam Singh who are decidedly interested witnesses. More so, in the absence of the testimony of the complainant who reportedly died before he could be examined."

The learned trial court had observed that the independent witnesses have not stated anything against the accused. But a perusal of the report lodged with the police by the complainant, shows that he had never named that these two persons had also witnessed the occurrence. But he had referred to the presence of his two sons who had reached there who have been examined by the prosecution and have corroborated in regard to the occurrence as alleged in the report lodged with the police. It is only in regard to PW-2 the complainant alleged that when he regained consciousness, he found Madho Ram also standing with his two sons. Therefore both these persons were not cited as eye witnesses to the occurrence and the learned trial court was required to consider the testimony of two sons of the complainant, namely, PW-1 Sukhvinder Singh and PW-6 Waryam Singh as to whether these statements inspire confidence or not or they suffer from any infirmities or contradictions. However, the learned trial court simply observed that I do not deem it safe to base conviction on the evidence of the complainant's sons who are decidedly interested witnesses. The learned trial court while making this observation had not considered the various decisions of the Hon'ble Apex

Court that simply because the eye witnesses are interested witnesses being sons of the complainant is not a ground to reject their testimonies out rightly. According to various decisions of Hon'ble Apex Court in case these were the only persons present at that time and were natural witnesses, their statements are not required to be rejected simply because of their relations or being interested witnesses. But in such situation the statements of such witnesses are required to be appreciated with more care and caution.

I may make a reference to decision of the Hon'ble Apex Court in **State of Gujarat vs. Nagin Bahi Dula,** AIR 1983 SC 839 wherein it was observed by their Lordships as under :

" The mere fact that the witnesses are relations or interested would not be sufficient to discard their testimony straightway unless it is proved that their evidence suffers from serious infirmities which raises considerable doubt in the mind of the court."

Apart from the above, the learned trial court also drew a conclusion out of its own accord that since time of occurrence was 9 p.m. and place was a khud, a few hundred yards away from the village and there is nothing to suggest that it was moonlit night, nor did any witness maintain that there was some kind of light in which the accused was identified. Thereafter in para 11 of the judgment the learned trial court finally observed that how were the complainant's sons able to identify the accused is beyond comprehension. This observation has been made by the learned trial court and conclusion drawn in regard to the identity of the accused when in cross-examination of the eye witnesses there were no suggestions that since it was dark at that time, the identity of the accused was not established. It cannot be said in the absence of any suggestion or evidence to this effect that it was sufficiently dark at that time and therefore the accused could not be identified particularly when not even a single suggestion was put to any of the witnesses in this regard that identity of the accused was not established. The learned trial court of its

own has drawn this conclusion and this conclusion is not based upon the facts of the case.

Apart from the above, the learned trial court did not refer to the medical evidence at all as to whether the medical evidence also corroborates the ocular version given by the prosecution witnesses or not. There is not even a mention of the Medical Officer's statement or the observations made by him. A perusal of the statement of PW-5 Dr.Sushil Sharma who examined the injured on the next day shows that he observed as under in regard to the injuries:

1. There was a badly crushed would of right little finger. It was irregular in shape and was bleeding. The peripheral part of the right little finger was chopped off. The terminal phalanx was taken off.

2. There was a bite mark of tooth on the anterior aspect of the left forearm in the middle with swelling and tenderness of said part.

He further admitted the suggestion that above mentioned injuries are possible if someone bites with the teeth. He admitted that the injured had consumed alcohol, but it is not a ground to reject his version. He admitted that this injury No.1 was possible if the hand of the person comes in the door of a jeep. The mere admission by Medical Officer of this suggestion is not sufficient to hold that the injured had suffered the injuries since his finger came in door of the jeep and in case he had suffered the injuries in this manner, where was the occasion for the complainant to falsely implicate the accused whose presence was established by the statements of his two sons who appeared in the witness box as prosecution witnesses. Moreover, for arguments sake if it is admitted that this injury was suffered by the injured when his finger came in the door of the jeep, what is the explanation for injury No.2 which was bite mark of tooth on the anterior aspect of the left forearm and this was clearly alleged by the complainant in his report that he was given tooth bite on his forearm which was also corroborated by the testimony of both the eye

witnesses i.e. the sons of the complainant. The presence of second injury ruled out that the first injury was suffered when the finger of the injured came in the jeep, which was not established from any evidence.

From the above discussion it is clear that the statements of two sons of the complainant clearly proved the allegations made in the FIR lodged by the complainant who could not appear in the court since he died and could not depose in the court about the injuries suffered by him or to see the fate of his case. However, statements of the sons of the complainant did not suffer from any infirmities or contradictions so as to hold that these cannot be relied upon. The learned trial court has rejected their evidence and the observations made in this regard can be said to be perverse and therefore the findings of learned trial court can be said to be palpably wrong, manifestly erroneous or unsustainable since the medical evidence had also corroborated the ocular version. Therefore the findings of the learned trial court are liable to be reversed and are reversed accordingly. The case shall go back to the learned trial court who shall proceed further from the stage after the respondent has been held guilty of the charge framed against him.

In view of the above discussion the appeal filed by the appellant is accepted, the respondent is held guilty under Section 325 and Section 506 IPC. The case is remanded back to the trial court for hearing the parties on the point of sentence and thereafter it shall proceed further. The respondent through his counsel shall appear before the trial court on 10.1.2007. The court may in addition issue bailable warrants of Rs.500/- against the accused for his appearance on the date fixed.

December 22 ,2006(g) **(V.K.Ahuja),J.**